IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 150 of 1984
in
SPECIAL CIVIL APPLICATION No 1089 of 1980
with
LETTERS PATENT APPEAL No 164 of 1984
in
SPECIAL CIVIL APPLICATION No 1965 of 1980

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATISHKUMAR BABAULAL SHAH

Versus

SARFARZKHAN G PATHAN

Appearance:

MR DP KINARIWALA for the Appellant - Absent.
MR MITUL SHELAT for the Respondent No.1
Ms.AVANI MEHTA for Respondent No. 1
MR BP TANNA for Respondent No. 2 & 3 - Absent.
RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 01/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. Both these appeals are directed against the common judgment and order dated 8th February, 1984, passed by the learned Single Judge in Special Civil Application No. 1089 of 1980 and Special Civil Application No. 1965 of 1980, by which the petitions were allowed by declaring that the present respondents-original petitioners were senior to the appellants in the cadre of Junior Clerk and their seniority was to be respected for the purpose of Regulation-17 of the Regulations framed under Section 465 of the Bombay Provincial Municipal Corporations Act, 1949, prescribing the conditions of service of the municipal officers and servants. It was directed that the Municipal Corporation shall examine the question of promotions of the original petitioners in light of such seniority and the provisions of Regulation-17 and if they were otherwise found entitled to promotion in terms of Regulation-17, their cases will be considered for actual salary from 1.1.80, but all other benefits except the actual salary will be extended to them fully if they are entitled to be promoted at the time when the persons now held to be junior to them were promoted.

#. According to the appellants, the learned Single Judge committed an error in holding that Regulation-17 of the Regulations applied to the facts of the case, and that on a true interpretation of the provisions, it did not apply to the persons working in the Audit Department, and that the seniority of those working in the Audit Department was to be maintained with reference to the date of entry in the department, and not on the basis of the standards laid down by the Regulation-17.

#. The learned Single Judge, while considering the above contention, referred to the provisions of Section 47 which specifically provided that the Municipal Chief Officer shall exercise supervision and control over the acts and proceedings of the servants under him subject to the rules and regulations (which would mean regulation framed by the Standing Committee) made under Section 465 of the Act. This interpretation was clearly warranted by

provisions of Section 47(1) of the Act.

#. Section 465(1)(l) of the said Act empowers the Standing Committee to frame regulations not inconsistent with the Act and the Rules, but in consonance with any resolution that may be passed by the Corporation in general, prescribing any other conditions of the officers and servants, besides the conditions specifically mentioned in the provisions preceding the said clause. Thus, so far as promotion was concerned, Regulation-17 was attracted in the case of an employee of the Corporation unless any specific provision was made in context of any particular category of employees contrary to the said provision under the Act or the Rules, or under the resolution of the Corporation.

#. Under Regulation-17 which relates to promotion, it was provided that promotion shall be given in accordance with the seniority in service, coupled with efficiency in the cadre of section concerned, provided that this was not to fetter the discretion of Municipal Commissioner to make direct appointments. In the Note below the said Regulation, it was specifically mentioned that in the case of the Clerks recruited on or after 1.4.'57, the seniority shall be determined with reference to the date of passing the departmental examination. In the present matter, there is no dispute about the fact that the respondents-original petitioners had joined as Junior Clerk in the Corporation earlier than the present appellants, and that they had passed the departmental examination also earlier than the present appellants. Therefore, the seniority of the respondents-original petitioners was required to be fixed above the appellants who passed their departmental examination later than the respondents. The learned Single Judge placed reliance on the decision of the Division Bench of this Court in Special Civil Application No. 146 of 1973 decided on 3rd February, 1975 in which the said Regulation-17 came to be considered. The Division Bench held that seniority was to be fixed under Regulation-17, not only on the basis of the length of service rendered, but the efficiency in the cadre was also to be taken notice of, and that the length of service was to be taken into account from the date of the passing of the departmental examination for the purpose of fixing seniority. The challenge against the constitutional validity of the provisions of the Regulation-17 on the ground that it violated Articles 14 and 16 of the Constitution was negatived and it was held that the contention that Regulation-17 was arbitrary or it gave unbridled powers to the Commissioner cannot be accepted. In our opinion also, Regulation-17 provides a

valid criteria for fixing seniority with reference to the date of passing of the departmental examination which has a nexus with efficiency in the cadre. There can be a valid distinction, between those who have passed departmental examination and those who have not, for the purpose of considering them for promotion which was not to be given merely on the basis of seniority irrespective of the efficiency of the incumbents which could be judged from the outcome of the results of the departmental examinations.

#. In our opinion, the learned Single Judge was justified in following the decision of the Division Bench and directing that the seniority of the original petitioners should be counted on the basis of the date of their passing the departmental examination, as stipulated by Regulation-17 read with Note below it. We find ourselves in complete agreement with the reasoning adopted by the learned Single Judge and the conclusions reached in the impugned decision. Both the appeals are, therefore, dismissed with no order as to costs.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]

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